

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

IN RE THE DEPENDENCY OF D.B.)	
)	
LAURA SWANSON,)	
)	No. 63618-9-I
Appellant,)	
)	DIVISION ONE
v.)	
)	
STATE OF WASHINGTON,)	
DEPARTMENT OF SOCIAL)	
AND HEALTH SERVICES,)	UNPUBLISHED OPINION
)	
Respondent.)	FILED: August 23, 2010

Schindler, J. — Laura Swanson appeals the decision terminating her parental rights to four-year-old D.B. Swanson claims the trial court did not adequately identify her parental deficiencies, and the Department of Social and Health Services (DSHS) did not prove current parental unfitness. In the alternative, Swanson argues clear, cogent, and convincing evidence does not support the findings that: (1) DSHS offered and provided all services capable of correcting her parental deficiencies; (2) there is little likelihood that conditions will be remedied in the near future; and (3) continuation of the parent-child relationship clearly diminishes prospects for early integration into a stable and

permanent home. Swanson also argues DSHS did not show that termination is in the child's best interest. The record clearly identifies Swanson's parental deficiencies, the trial court expressly found current parental unfitness, and substantial evidence supports the trial court's findings. We affirm the decision to terminate Swanson's parental rights to D.B.

FACTS

D.B. was born on April 25, 2005. Laura Swanson is the mother and Jason Busby is the father. Swanson and Busby had been together since 2002. While they were together, Swanson and Busby used drugs and were often homeless. Swanson has an extensive history of mental health issues and substance abuse.

To obtain housing, Swanson enrolled in a substance abuse treatment program with Catholic Community Services. Approximately three weeks before D.B. was born, Swanson tested positive for alcohol and left the program.

The hospital made a referral to DSHS the day after D.B. was born. The hospital reported Swanson said that she had spent time in a mental institution, that she took medication for depression, and that she admitted taking methamphetamine and THC¹ while she was pregnant with D.B. According to the referral, Busby had a prior history with Child Protective Services (CPS), was involved in using and selling methamphetamine, and had been recently released from jail for possession of stolen property.

¹ THC is the psychoactive ingredient in marijuana.

On April 28, DSHS filed a dependency petition. At the shelter care hearing on April 29, the court found “a serious threat of substantial harm to the child,” and ordered DSHS to place D.B in foster care. The court allowed Swanson to have supervised visitation with D.B., and ordered Swanson to obtain a substance abuse evaluation and a mental health assessment, follow all treatment recommendations, and attend parenting classes. The court ordered Busby to establish paternity and then contact the DSHS social worker for a services and visitation plan. The order also directed the parents to notify DSHS of any obstacles in obtaining court-ordered services.

The Snohomish County Foster Care Citizen Review Board (FCCRB) reviewed the out-of-home placement every three months. On July 21, the FCCRB recommended that D.B. remain in foster care and that supervised visitation continue.

On September 8, Robin LaDue, Ph.D., conducted a psychological evaluation of Swanson to assess her mental health and its effect on her ability to parent. The evaluation states that Swanson has “significant mental health issues,” including bipolar disorder, polysubstance abuse in early remission, anxiety disorder, depression, and borderline personality disorder. Dr. LaDue’s evaluation also describes Swanson’s long history of substance abuse. Dr. LaDue concluded that Swanson’s prognosis was “highly guarded” and her functioning “should be considered fragile at best.” Dr. LaDue also expressed concerns about Swanson’s relationship with Busby and future relationships.

Dr. LaDue recommended Swanson obtain mental health counseling and live on her own for at least a year. Dr. LaDue opposed reunification. Dr. LaDue recommended that D.B. remain in foster care, and that DSHS should find a permanent placement for the child. The evaluation states in pertinent part:

Ms. Swanson reportedly has nearly a year of sobriety. However, she claims to only recently have separated from Mr. Busby. This evaluator does not feel confident that Ms. Swanson will be able to maintain a separate life from Mr. Busby. Mr. Busby is clearly not stable at this time. Aside from her relationship with Mr. Busby; Ms. Swanson has not had any time on her own where she was fully self-sufficient. She is upset with her parents because they do not believe she should have her child back in her care. At this time, it appears Ms. Swanson's support system is fairly fragile. Given these concerns, the evaluator cannot recommend reunification. Ms. Swanson would have to demonstrate an extended period of time, a minimum of a year, where she is sober, fully engaged in mental health services, and has resolved her issues with Mr. Busby. If Ms. Swanson remains in this relationship, the evaluator cannot recommend any attempt at reunification. This evaluator also has concerns about future relationships. Her judgment is questionable and her dependency on others is high. This is a concern in terms of her being in any future relationships that might be abusive or involved in drugs. It is not clear that Ms. Swanson can maintain her own sobriety and stability if she is in an unhealthy relationship. This evaluator has significant enough concerns that increased and/or unsupervised visitation is not recommended. It is recommended that [D.B.] be continued in an out of home placement and a permanent placement be acquired.

In early September, Swanson began attending weekly counseling sessions with a behavioral health specialist with Safe Babies, Safe Moms, Karen Foley. Swanson also participated in group Dialectical Behavior Therapy (DBT) at Safe Babies, Safe Moms.

In October 2005, Busby entered into an agreed order of dependency. In

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November, Swanson completed a substance abuse treatment program. At the review hearing on January 18, 2006, the FCCRB continued to recommend that D.B. remain in foster care and that visitation with Swanson be supervised. However, based on the progress the parents were making with court-ordered services, the FCCRB also recommended pursuing returning D.B. to Swanson as a permanent plan.

On March 8, 2006, Swanson entered into an agreed order of dependency. The order states D.B. is dependent based on finding that he “has no parent, guardian or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child’s psychological or physical development” under former RCW 13.34.030(5)(c) (2003).

The March 8 disposition order requires Swanson to continue to participate in Narcotics Anonymous and Alcoholics Anonymous (NA/AA), continue to follow the recommendations of the psychological evaluation, including one year of being “fully engaged in mental health service,” submit to random urinalysis, maintain appropriate housing, attend parenting classes, and notify DSHS of any obstacles in obtaining court ordered services. The order allows Swanson to have unsupervised visitation with D.B. twice a week for two hours. But the court notes that visitation could increase after another evaluation of her mental health diagnosis “per therapist’s recommendations.” The March 8 permanency plan states that the primary plan was either adoption

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or return D.B. to Swanson.

In a letter dated July 24, Foley states that she is impressed with Swanson's progress in remaining clean and sober, and her efforts to become self-sufficient.

I continue to be impressed with Ms. Swanson's ability to remain clean and sober, begin to set limits with people who are still using drugs and to work toward becoming independent and self-sufficient.

At the permanency planning review hearing on July 25, the court found Swanson in compliance with court-ordered services. The disposition order requires Swanson to continue to participate in NA/AA, follow the recommendations of Dr. LaDue, including mental health services for a minimum of one year, maintain an environment suitable for caring for D.B., and cooperate with DSHS.

In December, Foley reported Swanson continued to make progress and "has been taking medications regularly for the 15 months she has been in therapy." At the permanency planning review hearing on January 10, 2007, the court allowed Swanson additional visitation time with D.B.

After DSHS provided Swanson additional visitation with D.B., she began to experience difficulty with her housing placement at a clean and sober facility, Autumn Leaf. At the end of March, Swanson was dismissed from Autumn Leaf for violating the housing contract by yelling, swearing, refusing to cooperate, and being disruptive. Nonetheless, the court authorized a "trial return home"

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beginning in May.

At the beginning of May, D.B. began living with Swanson in an apartment sponsored by Safe Babies, Safe Moms. Swanson's housing contract required her to have no contact with Busby and no overnight visitors without the prior authorization of DSHS.

At the May 29 review hearing, the court entered an order requiring Swanson to continue participating in NA/AA meetings, follow the recommendations of the psychological assessment, continue to participate in mental health therapy with Safe Babies, Safe Moms, take all prescribed medications, maintain stable employment, and contact DSHS weekly. The court found that Busby had not complied with a number of court-ordered services. The court ordered him to obtain an updated drug and alcohol and psychological evaluation and follow all treatment recommendations, complete a domestic violence assessment, and participate in parenting classes. The court allowed Busby to have supervised visitation with D.B. for a minimum of two hours twice a week. The order also expressly states that Swanson "shall not have any contact with Mr. Busby and shall not supervise any visitation between the child and Mr. Busby. All contact between the child and Mr. Busby shall be facilitated by the Department."

In August, a DSHS caseworker and the foster parent, who continued to provide care for D.B., expressed concerns about Swanson's boyfriend Robert Pounds. On September 13, DSHS made an early morning unannounced visit

to Swanson's apartment and found Pounds in her bedroom.

On September 14, Swanson entered into a safety plan with DSHS. In the safety plan, Swanson agreed to obtain approval for any adults who would have contact with D.B. Swanson also agreed that Pounds would not have contact with D.B. until DSHS obtained a criminal background check and gave approval. Because the criminal background check revealed that Pounds had prior convictions for assault, domestic violence, and drugs, DSHS did not authorize Pounds to have any contact with D.B.

At the dependency review hearing on October 16, the court ordered Swanson not to allow any adults to have contact with D.B. without a criminal background check and DSHS approval. The court allowed D.B. to stay with Swanson contingent on compliance with court-order requirements.

On November 26, Busby's aunt contacted DSHS to report that Swanson attended an NA meeting with D.B., and that afterwards she and D.B. left with Pounds in his car. On November 27, the court ordered D.B. removed from Swanson's care. Nonetheless, the court also ordered DSHS to develop a transition plan to return D.B. to Swanson by March 2, 2008.

At the dependency review hearing on March 5, the court found that Swanson did not maintain weekly contact with DSHS, did not participate in individual or group therapy, and did not maintain stable housing. However, frustrated with the failure of DSHS to follow the order to return D.B. to Swanson by March 2, the court allowed Swanson to have additional supervised visitation

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with D.B., and one unsupervised overnight stay per week.

Immediately after entry of the order, DSHS filed a motion asking the court to not allow overnight visitation with D.B. DSHS submitted declarations from the caseworker, Foley, Swanson's case manager with Safe Babies, Safe Moms, Melissa Hoefer-Kravagna, and Swanson's parenting coach Esther Patrick.

The DSHS caseworker stated Swanson was engaging in behavior that put D.B. at risk. The caseworker said that Swanson was using telephone chat lines to meet men and have sex. The caseworker also said that during the visits with D.B., Swanson neglected him and spent an inordinate amount of time talking on the phone, checking messages on her phone and text messaging.

Foley stated that despite more than two years in therapy, she had serious concerns about the safety of D.B. while in her care.

I do have serious concerns about her ability to accurately assess [sic] the safety of people she has put in her life, her inability to regularly take her medication for her bipolar disorder, and her continuous initiation of dangerous intimate relationships that could ultimately put his [D.B.'s] safety at risk.

Hoefer-Kravagna stated that the ongoing efforts over a two and a half year period to change Swanson's behavior and decision-making had been unsuccessful.

Laura consistently demonstrates that her gut belief in her sexual partner's moral fitness, should override other sources of information such as criminal background documents, the advice of her support team, and the requirements of her social worker. I

have observed no change in Laura's decision-making process that allows me to believe that any intervention to date has been successful. She continues to disclose to me information that not only highlights her ongoing risky behavior, but demonstrates a strong desire to hide that behavior from individuals who are in a decision-making capacity in her dependency case.

Hoefer-Kravagna also expressed concern that Swanson did not see D.B. "as an individual who is affected by her choices. This has real implications for the potential safety of a reunification effort."

Patrick said that Swanson was unable to provide a safe and secure environment for D.B. or successfully manage his challenging behavior.

Ms. Swanson appears to lack the basic parental instincts needed to successfully parent this very active child. Ms. Swanson minimizes her role as she blames and deflects her responsibilities....

At one attempt to reunify [D.B.] with his mother, [D.B.] suffered from weight loss. Ms. Swanson reported that she provided [D.B.] with the foods that he would eat and did not understand why she was being held responsible for his weight loss. At the last reunification, Ms. Swanson signed an agreement to have no contact with Mr. Pounds and violated this agreement. After being caught with Mr. Pounds, she minimized this contact and blamed the paternal aunt for [D.B.]'s removal.

Ms. Swanson does not recognize [D.B.]'s significant behavioral challenges and believes that she is equipped to manage his oppositional, defiant, aggressive and violent behaviors.

[D.B.] is a very vulnerable 2.10 years of age child and deserves to be in a home where he is safe and secure. Ms. Swanson has proven for the last three (3) years, and two (2) reunification attempts that she is not capable of providing [D.B.] with the safety he deserves....

Ms. Swanson does not appear to possess the basic parental instinct needed to safely raise [D.B.] into adulthood and this reunification should be strongly reconsidered to an open adoption.

In response, Swanson admitted that she used telephone chat lines to meet men, but denied doing so in order to have sex.

Swanson also admitted checking text messages during visits with D.B., but denied sending any messages or talking on the telephone.

Swanson also denied that she neglected D.B.'s needs.

The court suspended the overnight stay with Swanson and reinstated supervised visitation. The court ordered Swanson to obtain another psychological evaluation to address her mental health issues and her ability to parent. The parties agreed that Kenneth Asher, Ph.D., would conduct the evaluation.²

After the hearing, Swanson stopped taking prescribed medications, stopped going to individual therapy with Foley, and stopped attending group DBT therapy. But Swanson asked DSHS for a referral to a therapist to replace Foley. DSHS caseworker Carol Agostonelli sent Swanson letters in June and August, identifying other available mental health providers. Agostonelli sent additional referral letters to Swanson in October and December, noting that at least one of the identified mental health service providers offered a sliding fee.

Swanson failed to appear at the permanency planning hearing on September 15. At the hearing, the court found Swanson was not

² Dr. Asher is not a psychiatrist, does not prescribe medication, and testified that he is not a "proponent of medication for psychological problems."

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in compliance with a number of court-ordered requirements. The court ordered supervised visitation and compliance with court-ordered services. The order also reiterated no contact with Busby.

On September 18, DSHS filed a petition to terminate the parental rights of Swanson and Busby. Busby agreed to relinquish his parental rights to D.B., and an order terminating his parental rights was entered in January 2009.

Dr. Asher completed his psychological evaluation of Swanson in January 2009. Dr. Asher diagnosed Swanson with clinically significant ADHD, anxiety and depression, and “intrusive; aggressive; and antisocial behavior.” Dr. Asher reported that despite progress, Swanson still had “[a] strong tendency to be influenced by others” and tended to minimize or deny problems. Dr. Asher also stated that despite the “great amount of support” Swanson had received, her improved status was “fragile, and likely to deteriorate were she placed under stress or if support were reduced.” Dr. Asher believed that if Swanson was functioning well, she could care for D.B., but that “[u]nfortunately, this varies, which would place [D.B.] at risk a significant minority of the time. Her vulnerability to outside influences complicates her decision-making.” Dr. Asher concluded that Swanson “has not yet achieved sufficient stability and reliability for [D.B.] to be placed in her care with confidence Despite her own positive progress, Ms. Swanson’s ‘window of opportunity’ to successfully care for [D.B.] may have passed.” Dr. Asher also expressed concerns about

“her ambivalence toward working toward healthy functioning” and noted that her ambivalence served “to lengthen the time that it has taken her to reach even this level, which will make it even less likely that her son’s placement with her could succeed.”

At the request of DSHS, Dr. Kwang-Hie Park conducted a psychiatric assessment of Swanson and her need for medication. In his evaluation dated February 26, Dr. Park diagnosed Swanson as suffering from bipolar disorder, with intermittent depression, ADHD, and substance abuse in partial remission. Dr. Park recommended that Swanson resume taking prescribed medications for ADHD and depression, and return for further evaluation. Swanson did not resume taking prescribed medications and did not return to see Dr. Park.

At the March 24 review hearing, the court found that Swanson was not in compliance with court-ordered services, including individual and DBT therapy, “has not maintained weekly contact with the social worker; has not refrained from contact with Mr. Busby;” and did not provide documentation that she was taking prescribed medications. The court reduced supervised visitation with D.B. to once a month.

The four-day termination trial began on May 4, when D.B. was four years old. Except for the six-month period in 2007 when D.B. had lived with Swanson, he had lived with the same foster family since he was three days old. Dr. LaDue, Dr. Asher, Foley, Hoefer-Kravagna, Patrick, the DSHS caseworker, and a visitation supervisor testified in favor of termination. The guardian ad

litem also recommended termination. The GAL said that D.B. was thriving in foster care, that Swanson had not followed the recommendations of her treatment providers, and she was not capable of parenting D.B. in the foreseeable future.

Swanson and Busby attended the trial together. Swanson testified that she started spending time with Busby in October 2008. Swanson told the court that Busby admitted he “is an addict and admits he has a problem and wants to change his life.” Swanson also said that Busby “wants to be a good parent and he wants to be a family with me and [D.B.]. We eventually would like to get married and have another child.” Swanson stated that she was on a waiting list with one of the providers identified by DSHS and expected to resume therapy in a couple of months.

The court terminated Swanson’s parental rights to D.B. The court entered extensive findings of fact and conclusions of law. Swanson appeals.

ANALYSIS

Standard of Review for Termination

Parents have a fundamental liberty interest in the care and custody of their children. U.S. Const. amends. V, XIV; Wash. Const. art. I, § 3. Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); In Custody of Smith, 137 Wn.2d 1, 27, 969 P.2d 21 (1998). But a parent’s constitutional right is not absolute. The paramount consideration in a

termination proceeding is the welfare of the child. In re Young, 24 Wn. App. 392, 395, 600 P.2d 1312 (1979). The State has a compelling interest to prevent harm to a child and has an obligation to intervene and protect a child from harm or risk of harm. Santosky, 455 U.S. at 766.

In order to terminate a parent-child relationship, DSHS must establish by clear, cogent, and convincing evidence the six statutory factors set forth in RCW 13.34.180(1), which requires the court to find:

- (a) That the child has been found to be a dependent child;
- (b) That the court has entered a dispositional order pursuant to RCW 13.34.130;
- (c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;
- (d) That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;
- (e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future ...; and
- (f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

Evidence is clear, cogent, and convincing “when the ultimate fact in issue is shown by the evidence to be ‘highly probable.’” In re Dependency of K.R., 128 Wn.2d 129, 141, 904 P.2d 1132 (1995) (quoting In re Sego, 82 Wn.2d at 739).

The deference paid to the trial court’s advantage of having the witness before it is particularly important in a parental termination proceeding. In re

Aschauer, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980). This court will not weigh the evidence or the credibility of the witnesses. In re Sego, 82 Wn.2d at 739-40. If there is substantial evidence “which the lower court could reasonably have found to be clear, cogent and convincing, an appellate court should not disturb the trial court’s findings.” In re Aschauer, 93 Wn.2d at 695.

Whether termination is in the best interest of the child must also be shown by a preponderance of the evidence. RCW 13.34.190(1).

Unchallenged findings are verities on appeal. In re Interest of J.F., 109 Wn. App. 718, 722, 37 P.3d 1227 (2001).

Parental Deficiencies and Current Parental Unfitness

Swanson asserts that the court did not sufficiently identify her parental deficiencies to justify termination of her parental rights, and that there is no evidence of current parental unfitness. Swanson claims that because DSHS did not prove current parental unfitness, the trial court decision to terminate her parental rights violates due process and must be reversed. We disagree with Swanson’s assertion. The trial court record and the trial court’s extensive findings clearly identify Swanson’s mental health issues and the concerns for D.B.’s safety created by Swanson’s behavior and her relationships. The most current psychiatric evaluation, performed by Dr. Park shortly before trial, diagnosed Swanson with bipolar disorder, ADHD, and polysubstance dependence, albeit in partial remission. The evaluation also confirms that Swanson refused to take prescribed medications.

Swanson told Dr. Asher and admitted at trial that she was not taking prescribed medications because, “I don’t feel I need medication.” The court also found that despite “clinically significant concerns in areas of anxiety and depression; attention problems; and intrusive, aggressive and antisocial behavior,” Swanson expressed little interest in seeking psychological help and evidenced “a complete lack of understanding about how her relationships interfere with her ability to parent.” Moreover, as demonstrated by her reunification with Busby, Swanson continued to “associate with whomever she wants, regardless of criminal history or history of drug abuse.”

As Swanson points out, a court cannot terminate parental rights based solely on a parent’s mental illness. In re Dependency of T.L.G., 126 Wn. App. 181, 203, 108 P.3d 156 (2005). “The court must examine the relationship between the mental condition and parenting ability.” In re T.L.G., 126 Wn. App. at 203. But here, the record shows a relationship between Swanson’s mental health issues and her parenting ability.

Over the course of the nearly three and a half year dependency, all of the treatment providers, including Dr. LaDue, Foley, Hoefer-Kravagna, Patrick, and Dr. Asher, expressed similar concerns about Swanson’s mental health issues, her parenting deficiencies, and her ability to parent D.B. Dr. LaDue’s psychological evaluation in September 2005 identified a connection with Swanson’s long history of mental health issues and her ability to parent. The court’s unchallenged findings also note Dr. LaDue’s “concerns regarding her

relationship with Mr. Busby” because of his “continued substance abuse and criminal activity,” and “concerns about the mother’s future relationships, and the fact that she was prone to high risk behavior.” According to Dr. LaDue, Swanson’s unstable relationship with Busby is a common pattern for an individual with borderline personality disorder. Dr. LaDue also expressed concern that Swanson failed to understand how her relationship with Busby affected D.B.

Foley expressed “serious concerns” about Swanson’s ability to assess the people with whom she formed relationships and their effect on D.B.’s safety, as well as her failure to take prescribed medications. Hoefer-Kravagna also stated that despite over two years of therapy, efforts to change Swanson’s behavior and decision-making were unsuccessful, that Swanson still relied on her “gut belief” in her choices of partners.

According to Patrick, Swanson minimized her own responsibility and blamed others for her failed attempt to reunify with D.B. In his report, Dr. Asher confirms that, despite the progress Swanson made in treatment, she still had “[a] strong tendency to be influenced by others,” tended to minimize or deny problems, and was not sufficiently stable or reliable for D.B. to be placed in her care.

Swanson cites In re Dependency of M.S.D., 144 Wn. App. 468, 477, 182 P.3d 978 (2008), to argue that her poor choice of partners does not justify termination. But unlike in In re M.S.D., here Swanson entered into an agreed

order of dependency and did not contest the court's finding under former RCW 13.34.030(5)(c) that D.B. was dependent because he "has no parent, guardian or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development."

In a recent decision, In re Welfare of A.B., 168 Wn.2d 908, 232 P.3d 1104 (2010), our Supreme Court held that the trial court must enter an explicit finding that the parent is currently unfit.

[W]hen an appellate court is faced with a record that omits an explicit finding of current parental unfitness, the appellate court can imply or infer the omitted finding if—but only if—all the facts and circumstances in the record (including but not limited to any boiler plate findings that parrot RCW 13.34.180) clearly demonstrate that the omitted finding was actually intended, and thus made, by the trial court.

In re A.B., 168 Wn.2d at 927.

In this case, the court expressly found that Swanson 'is not currently able to parent [D.B.] and there is little likelihood that she would be able to parent in the near future.'" Furthermore, the facts and circumstances in the record clearly show that Swanson is currently unfit to parent D.B.

In the alternative Swanson argues that, even if the trial court sufficiently identified her parental deficiencies and expressly found current unfitness, there is no clear, cogent, and convincing evidence to support the court's findings on three of the statutory factors under RCW 13.34.180(1): that (1) all services capable of correcting a parental deficiency were provided; (2) there was little

likelihood that conditions will be remedied in the near future; and (3) continuation of the parent-child relationship clearly diminished prospects for early integration into a stable and permanent home.³ Swanson also challenges the finding that termination was in D.B.'s best interest.

Adequacy of Services

Swanson argues the trial court erred in finding that DSHS offered or provided all necessary services. Specifically, Swanson contends DSHS did not provide services to address her mental health issues and relationship issues, and did not provide the same parenting services the foster parents received.

DSHS has an obligation under RCW 13.34.180(1)(d) to offer and provide services capable of correcting the parental deficiencies within the foreseeable future. RCW 13.34.180(1)(d) refers to services in the disposition order. The statutory obligation to provide services requires DSHS, at a minimum, to provide the parent with a referral list of agencies or organizations that provide the court-ordered services. In re Hall, 99 Wn.2d 842, 850, 664 P.2d 1245 (1983). It is well established that additional services that might have been helpful need not be offered when the parent is unwilling or unable to make use of the services provided. In re Interest of J.W., 111 Wn. App. 180,

³ Swanson does not challenge the trial court's findings as to the first three factors under RCW 13.34.180(1) or a majority of the findings of fact. Finding of Fact 1.66 states: "The court finds that the first three elements of RCW 13.34.180(1) are established. [D.B.] was found dependent on ... March 08, 2006 regarding the mother. Dispositional orders pursuant to RCW 13.34.130 were entered for both parents. On April 28, 2005 the child was placed in out-of-home care for two years. On November 27, 200[7], the child was placed in out-of-home care, where he remains to date. [D.B.] has been in foster care for seven-eight[h]s of his life." Unchallenged findings of fact are verities on appeal. In re J.F., 109 Wn. App. at 722.

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187, 43 P.3d 1273 (2002); In re Dependency of T.R., 108 Wn. App. 149, 163, 29 P.3d 1275 (2001).

It is undisputed that DSHS provided Swanson with extensive services to address her drug abuse, mental health issues, parenting skills, and housing. In response to Dr. LaDue's evaluation, DSHS referred Swanson to Foley for individual therapy and DBT therapy, and Swanson participated in therapy at Safe Babies, Safe Moms for approximately three years. DSHS also later referred Swanson to Dr. Asher for another mental health and parenting evaluation, and referred Swanson to Dr. Park for a current mental health evaluation right before trial.

Despite the services that were offered and provided, at the time of the trial Swanson was not taking her prescribed medications, was not engaged in therapy, and, contrary to the court order, had resumed her relationship with Busby.

Swanson argues that DSHS did not help her locate another therapist after she stopped seeing Foley. According to Swanson, the providers DSHS referred her to had long waiting lists and she could not afford to pay for therapy.

There is no dispute that the DSHS caseworker sent Swanson referral letters in June, August, October, and December 2008, listing four different mental health counseling service providers. Swanson's financial declaration shows she was working and could pay for individual counseling on a sliding fee

scale. The referrals in October and December specifically note that one of the providers offers services on a sliding fee basis. Each letter also states:

“Please contact them as soon as possible to set up appointments If you need assistance with any aspect of obtaining services, please contact me immediately so that I can help you.” There is no dispute Swanson did not contact the caseworker about any difficulty in obtaining services until January 2009.

Swanson also argues that DSHS did not provide her with the same parenting skills coaching that DSHS provided the foster parents. But, contrary to Swanson’s argument, Patrick testified that she provided interactive parenting coaching not only to the foster parents but also to Swanson.

The trial court’s finding that DSHS offered or provided all court-ordered and necessary services, capable of correcting parental deficiencies in the foreseeable future, is supported by substantial evidence.

Likelihood of Remedying Parental Deficiencies In the Near Future

Swanson contends the trial court erred in finding there is little likelihood conditions would be remedied so that D.B. could be returned in the near future. Swanson points to evidence of her improved parenting skills and participation in therapy. Swanson asserts that the fact that she waited to resume her relationship with Busby until he entered recovery from substance abuse shows she was has made progress.

The focus of this statutory factor is whether the parent’s identified

deficiencies have been corrected. In re Welfare of M.R.H., 145 Wn. App. 10, 27, 188 P.3d 501 (2008). What constitutes returning the child to the parent in the “near future” depends on the age of the child and the circumstances of the placement. In re T.L.G., 126 Wn. App. at 204. A parent’s failure to substantially improve parental deficiencies within twelve months after entry of the disposition order gives rise to a rebuttable presumption that there is little likelihood the children can be returned to the parent in the near future. In re M.R.H., 145 Wn. App. at 27. For a young child such, the foreseeable future is measured in months. In re Hall, 99 Wn.2d at 851.

Here, D.B. was four years old and had been out of Swanson’s care for almost all of his life. Despite years of individual and group therapy, the court’s unchallenged findings state that Swanson “exhibited a continued course of behavior concerning the lack of understanding” of how her relationships with Pounds and Busby put D.B. at risk and affected her ability to parent. The trial court’s finding that there was little likelihood conditions would be remedied so that D.B. could be returned to her in the near future is supported by substantial evidence.

Prospects for Early Integration into a Stable and Permanent Home

The main focus under RCW 13.34.180(1)(f) is whether the parent-child relationship impedes the child’s prospects for integration. In re Dependency of K.S.C., 137 Wn.2d 918, 927, 976 P.2d 113 (1999).

Swanson contends that there is no evidence the foster family was

unwilling to continue caring for D.B. if she retained her parental rights. But DSHS caseworker Agostonelli unequivocally testified that if Swanson's parental rights were not terminated, the foster family was unwilling to continue to care for D.B. The unchallenged findings also establish that D.B. "has been, at this point, absorbed into his foster family," and that the foster family wanted to adopt D.B.

While long-term foster care may be appropriate in unique circumstances, it is well established that the statutory factor is mainly concerned with the continued effect of the legal relationship between the parent and the child. In re Dependency of A.C., 123 Wn. App. 240, 250, 98 P.2d 89 (2004). In In re Dependency of J.C., 130 Wn.2d 418, 427, 924 P.2d 21 (1996), the Washington Supreme Court held that a finding under this statutory factor necessarily follows from an adequate showing that there is little likelihood that conditions will be remedied in the near future.

The trial court's finding that allowing Swanson's parental relationship with D.B. to continue clearly diminished his prospect for early integration into a stable and permanent home is supported by substantial evidence.

Best Interest of the Child

Finally, Swanson challenges the trial court's finding that termination of her parental rights is in the child's best interest.

A child has a fundamental right to a safe, stable, and permanent home, and a speedy resolution to a dependency or termination proceeding. RCW

13.34.020. The needs of a parent are subordinate to the child's welfare. In re J.W., 90 Wn. App. at 427. When a parent has not been able to overcome parental deficiencies during a lengthy dependency, the court is justified in finding that termination is in the child's best interest. In re Dependency of S.M.H., 128 Wn. App. 45, 60, 115 P.3d 990 (2005).

Swanson relies on Dr. Asher's testimony that it would be good if D.B. maintained some contact with her to argue termination is not in D.B.'s best interest. However, Dr. Asher also testified that "choosing a stable, healthy place for the child" was the most important priority, "even if it's at the cost of a relationship with the biological parent." It is undisputed that Swanson loves D.B. and had made some effort and initially even showed some success at remedying her parental deficiencies. But she still had a long way to go, and at the time of trial, she demonstrated an inability to address the problems posed by her longstanding mental health problems and the effect of her relationships with men who were a danger to D.B.

Substantial evidence supports the trial court's conclusion that termination of Swanson's parental rights was in D.B.'s best interest.

We affirm the trial court's decision to terminate Swanson's parental rights to D.B.

A handwritten signature in cursive script, appearing to read "Schneider, J.", with a long horizontal flourish extending to the right.

WE CONCUR:

No. 63618-9-1/26

Appelwick J.

Cox, J.